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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. DAVID BRADLEY WOODS, Defendant and Appellant.	D040160 (Super. Ct. No. SCD160253)

APPEAL from a judgment of the Superior Court of San Diego County, Roger W. Krauel, Howard H. Shore, Judith F. Hayes, Judges. Affirmed.

David Bradley Woods appeals his convictions by a jury of using tear gas against a peace officer (Pen. Code,[1] § 12403.7, subd. (g)), resisting a peace officer in the performance of his duties by the use of force and violence (§ 69), battery upon a peace officer (§ 243, subd. (b)), and exhibiting a deadly weapon other than a firearm (§ 417,

1 All statutory references are to the Penal Code unless otherwise specified.

subd. (a)(1)). In a bifurcated trial, the court found Woods had served a prior prison term (§ 667.5, subd. (b)) and had suffered a prior strike conviction. (§ 667, subds. (b)-(i).)

On appeal, Woods contends his convictions of using tear gas against a peace officer and resisting a peace officer must be reversed because the court failed to instruct the jury that his mental infirmity was a defense to these offenses; the court failed to instruct on the lesser included offenses of misdemeanor resisting arrest and simple unlawful use of tear gas; and the court erred in failing to disclose police officer personnel files pursuant to his *Pitchess* motion (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*)). We affirm the judgment.

FACTS

Woods lived next door to Bruce Discher in an apartment building. In the early morning hours of May 22, 2001, Discher heard banging noises, screaming, and yelling coming from Woods's apartment. The noises sounded like someone moving furniture or throwing balls. The noises had been going on for days and continued throughout the night.

About 6:00 a.m., Discher was awakened by his computer sounding an alarm due to an interruption in its power supply. Discher got up and went outside to the electrical box to flip the breaker switch. There was silicon putty on the door to the electrical box. When Discher returned to his apartment, he noticed several rancid broken eggs by his front door, a dark silicon putty smeared on one of the doors to Woods's apartment in "some kind of anarchy or star of David symbol" and putty smeared over the peephole of Discher's apartment door. As Discher stood by his door, he heard a door opening and

saw Woods waving around some wire cutters and "frantically ranting and raving all kinds of nonsensical statements" to Discher such as "that we pince and mince and dice people." Woods motioned toward Discher a couple of times with the wire cutters. Discher went into his apartment and heard Woods's door slam.

Woods continued to rant, bang and yell at the top of his lungs about death, religion, and war, among other things. He said threatening things "at the top of his lungs." After 15 to 20 minutes, Discher called the police and asked that Woods be placed under arrest for brandishing a weapon.

The police responded, talked with Discher, and then knocked on Woods's door, identifying themselves as police. Woods pounded on the door from the inside, yelled, "Do you want eggs shoved up your ass" and "I'm going to kick your fucking ass," turned a radio up louder and started yelling about God, Satan, Hell's Angels and demons. A police supervisor was called and told of the situation, including that Discher wanted Woods arrested. The supervisor telephoned Woods from Discher's apartment in an unsuccessful attempt to convince Woods to leave his apartment.

Eventually, a number of police officers went to Woods's apartment, knocked on the door, repeatedly identified themselves as police officers, and, after failing to unlock the door with a key, forcibly entered the apartment. Woods had blocked the door with furniture. Woods was naked and flailing his arms as if he were going to hit one of the officers. One of the officers used a taser that stopped Woods "for a second." Woods continued yelling he was going to "kick [their] asses." During the struggle to subdue Woods, Woods punched two officers, bit one officer's arm and sprayed an officer using a

canister of pepper spray that had fallen from the officer's belt during the struggle. Eventually, the officers were able to handcuff Woods and gain control.

Woods did not present any evidence.

DISCUSSION

I

Mental Infirmity Defense

Woods contends that his obvious mental infirmity was a defense to the charges of using tear gas against a peace officer and resisting a peace officer in the performance of his duties.[2] He argues both are specific intent crimes.

"Evidence of mental disease, mental defect, or mental disorder shall not be admitted to show or negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged." (§ 28, subd. (a).)

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2 The Attorney General argues there was no evidence presented that Woods suffered from a mental defect because establishing such a medical condition requires expert testimony. Expert testimony is required when a matter is not within common understanding (see Evid. Code, §§ 800, 801) and is prohibited on the question of whether an individual had a required mental state (Pen. Code, § 29). We note that here it was obvious, even to a lay person, that Woods was suffering from some mental infirmity at the time of the incident.

The terms "[s]pecific and general intent have been notoriously difficult terms to define and apply . . . ." (*People v. Hood* (1969) 1 Cal.3d 444, 456.) Typically, a crime is deemed to be a general intent offense when the crime " 'consists of only the description of a particular act, without reference to intent to do a further act or achieve a future consequence' "; in such situations, the question is " 'whether the defendant intended to do the proscribed act.' " (*People v. Whitfield* (1994) 7 Cal.4th 437, 449.) Typically, a crime is deemed to be a specific intent offense when the definition of the offense refers to the " 'defendant's intent to do some further act or achieve some additional consequence . . . .' " (*Ibid*.) However, this definition is not applied mechanically since even a general intent crime may require a specific mental state such as knowledge. (See *People v. Reyes* (1997) 52 Cal.App.4th 975, 983.) For example, the crime of receiving stolen property requires knowledge that the property was stolen and evidence of a mental disorder may be relevant to show the defendant lacked the requisite knowledge. (*Id*. at pp. 985-986.)

(A) Use of Tear Gas Against a Police Officer

Use of a tear gas weapon except in self-defense is a felony "if the use is against a peace officer . . . engaged in the performance of his or her official duties and the person committing the offense knows or reasonably should know that the victim is a peace officer . . . ." (§ 12403.7, subd. (g).) Woods argues that the knowledge requirement of this offense, i.e., that the person "knows or reasonably should know that the victim is a peace officer" makes this a specific intent crime to which evidence of a mental defect, disease, or disorder is relevant. He relies principally on *People v. Reyes, supra,* 52 Cal.App.4th 975, a decision by this court involving the offense of receiving stolen

property. In *Reyes*, we held evidence of voluntary intoxication was admissible on the question of whether the defendant had the requisite knowledge that the property was stolen at the time he received or concealed the property. (*Id*. at p. 986.)

The problem with Woods's reliance on the *Reyes* case is that the knowledge requirement for receiving stolen property is based on a subjective standard, i.e., that the defendant himself actually knew that the property was stolen at the time he received or concealed it. In contrast, the offense here is committed when either the individual had actual knowledge that the victim was a peace officer or when the individual "reasonably should know" the victim is a peace officer. This language indicates that an individual may be found guilty under either a subjective standard based on the defendant's actual knowledge that the victim was a peace officer or under an objective standard based on the fact a reasonable person would have known the victim was a peace officer. (See *People v. Finney* (1980) 110 Cal.App.3d 705, 712-714 ["reasonably should know" language in § 245, subd. (b) (assault with a deadly weapon on a peace officer) construed to impose an objective standard]; *People v. Whalen* (1973) 33 Cal.App.3d 710, 717-718 [same]; see also *People v. Mathews* (1994) 25 Cal.App.4th 89, 97-98 ["reasonably should know" language in § 417, subd. (c) (brandishing a weapon in the immediate presence of a peace officer) construed to not require actual knowledge]; *People v. Hall* (2000) 83 Cal.App.4th 1084, 1092 [violation of § 417, subd. (c) (brandishing weapon in the immediate presence of a peace officer) is a general intent crime].) Thus, a defendant's lack of actual knowledge that the victim is a peace officer, whether due to intoxication or a mental defect, disease, or disorder, is not a defense to the crime if a reasonable person would

have known the victim was a peace officer. (See *People v. Finney, supra,* at pp. 713-714 ["defendant's unawareness of the officers' identities due to self-induced intoxication is immaterial when a sober person would have been aware of their identities"].) In other words, this is a general intent crime. In this case, it was undisputed that the officers were in uniform and announced that they were police officers. No reasonable person would not have realized the victim was a peace officer. This was not a specific intent crime warranting an instruction that a mental defect, disorder, or disease was a defense to the crime.

(B) Section 69–Forcibly Resisting an Officer

Section 69 provides:

> "Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, *or* who knowingly resists, by the use of force or violence, such officer, in the performance of his duty, is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both such fine and imprisonment." (Italics added.)

"[S]ection 69 contains two distinct offenses [citation]; the first part of the section defines a specific intent crime, whereas the second portion constitutes a general intent offense." (*People v. Roberts* (1982) 131 Cal.App.3d Supp. 1, 9.)

Woods relies on *People v. Gutierrez* (2002) 28 Cal.4th 1083 for the proposition that section 69 is a specific intent crime. *Gutierrez*, however, dealt with the first offense described in section 69, i.e., " 'attempts, by means of any threat or violence, to deter or prevent any executive officer from performing any duty imposed upon such officer by

law . . . .' " (*Id*. at p. 1153.) As the *Gutierrez* court recognized, the offense required proof that the defendant had the specific intent to interfere with the executive officer's performance of his duties, in that case by threatening to kill a deputy while deputies were searching his prison cell. (*Id*. at pp. 1153-1154.)

Here, in contrast, Woods was charged with the offense stated in the second part of section 69. That offense is committed when a person "knowingly resists, by the use of force or violence, [an] officer, in the performance of his duty." This offense does not require a specific intent to interfere with an officer's performance of his or her duties but only knowing resistance of an officer in the performance of his duty by using force or violence. Knowing resistance is a mental state equivalent to a general criminal intent (i.e., an intent to do the act) and does not delineate a specific criminal intent. (See *In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1329 [interpreting misdemeanor resisting arrest statute that requires willful resistance, delay or obstruction of a peace officer in the performance of his duties as being a general intent crime, i.e., requiring only an intent to do the act of resisting, delaying, or obstructing].) Further, like the tear gas offense, it is not required that the defendant have actual knowledge his victim was a peace officer; it is sufficient that a reasonable person would have known the victim was a peace officer. (See *People v. Simons* (1996) 42 Cal.App.4th 1100, 1108 [interpreting misdemeanor resisting arrest statute as requiring the defendant either knew or reasonably should have known the victim was a peace officer engaged in the performance of his or her duties].)

We find no error in the court's failure to instruct that a mental defect, disorder, or disease was a defense to section 69.

II

Instructions on Lesser Included Offense of Misdemeanor Resisting Arrest

Woods contends the court erred in failing to instruct on misdemeanor resisting arrest (§ 148) as a lesser included offense of the felony resisting arrest offense of section 69 and on the simple unlawful use of tear gas (not against a police officer) as a lesser included offense of unlawful use of tear gas against a police officer. This contention rests on the same premise as his first argument, i.e., that his mental defect, disease, or disorder provided a defense to the charged offenses. He essentially argues that because the jury could have found that he did not realize his victims were peace officers due to his mental disorder, therefore the jury should have been instructed they could convict him of misdemeanor offenses not involving peace officers. As we explained in part I, *ante*, actual knowledge was not necessary; it was sufficient if a reasonable person would have known the victims were peace officers acting in the performance of their duty. There was no evidence presented which would have supported a finding that a reasonable person might have had any doubts as to whether the victims were peace officers acting in the performance of their duties.

Lesser included instructions were not warranted in this case because there was no evidence presented raising a question as to whether all of the elements of the charged offenses were present or that would justify a conviction only of the lesser offense. *(People v. Birks* (1998) 19 Cal.4th 108, 118; *People v. Lopez* (1998) 19 Cal.4th 282, 287.)

III

Pitchess Motion

Woods brought a *Pitchess* motion seeking to have the trial court review in camera the personnel files of the police officers involved in his case to see if the files contained relevant evidence on the issues of false reporting for probable cause to search or the use of excessive force that should be disclosed to the defense. On August 20, 2001, the trial court, after conducting an in camera review of the files on the issue of false reporting, determined there was no relevant evidence. On October 31, 2001, the trial court, after conducting an in camera review of the files on the issue of excessive force, determined that the names of two citizens who had filed reports of excessive force against officers involved in this case should be disclosed to the defense. Woods has asked us to review the police officer files to determine whether there were any additional matters that should have been disclosed.

"A criminal defendant has a limited right to discovery of peace officer personnel records." (*California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1019.) If a defendant has established good cause for the discovery or disclosure of information in peace officer personnel files, then the court conducts an in camera review of the files to determine whether the files contain records of complaints or investigation relating to the officer's performance of his or her duties that are relevant to the subject matter of the litigation. (*Id*. at pp. 1019-1021; Evid. Code, §§ 915, subd. (b), 1043, 1045.) A defendant is not entitled to disclosure of complaints that are more than five years old, to the conclusions of an officer investigating a complaint against peace

officers, or facts that are so remote that disclosure would be of little or no practical benefit. (Evid. Code, § 1045, subd. (b).) On appeal, we conduct a de novo review of the personnel files. (See *People v. Mooc* (2002) 26 Cal.4th 1216, 1229-1230, 1232.) We review the trial court's determination using an abuse of discretion standard. (*People v. Jackson* (1996) 13 Cal.4th 1164, 1220.)

Section 1054.5 provides sanctions for discovery problems in criminal cases. However, "[p]osttrial, the statutory remedies of section 1054.5 are no longer available. [Citation.] Posttrial, . . . to prevail on a contention made on appeal from a judgment of conviction on the grounds of violation of the pretrial discovery right of a defendant, the defendant must establish that ' "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different." ' " (*People v. Bohannon* (2000) 82 Cal.App.4th 798, 806-807, fn. omitted.) "Put another way, the question is whether [the failure to disclose potentially exculpatory evidence] resulted in a denial of [the defendant's] right to a fair trial, 'understood as a trial resulting in a verdict worthy of confidence.' [Citation.] 'A "reasonable probability" of a different result is accordingly shown when [an] evidentiary suppression "undermines confidence in the outcome of the trial." ' " (*People v. Kasim* (1997) 56 Cal.App.4th 1360, 1381-1382.) "Once it is determined that undisclosed favorable evidence could reasonably have put the case in such a different light as to undermine confidence in the verdict, there is no need for further harmless error analysis." (*Id.* at p. 1382.)

We have reviewed the police personnel records examined by the trial court both for complaints of the use of excessive force and for false reporting of probable cause.

We found one complaint of excessive force involving one of the officers that should have been disclosed to the defense. Thus, we find that the trial court abused its discretion and that error occurred. Nonetheless, we conclude reversal is not warranted in this case.

If this complainant had been disclosed and had testified, the complainant's testimony possibly could have impeached an officer's testimony had the jury found the complainant was credible and had the officer denied using excessive force on the prior occasion. Such impeachment would have related to a collateral issue, although arguably it is possible the jury might have found the officer's testimony as a whole was less credible. However, this was not a case where only a single officer was involved. There were multiple officers involved who witnessed Woods's violent conduct and were involved in the arrest. They also testified to Woods's violent conduct. Additionally, there was testimony by a citizen, Discher, as to Woods's violent, threatening conduct. Not only did Discher testify about Woods's violent conduct prior to the arrival of the police, Discher also testified that during the arrest he could hear the officers shouting, "He's got my pepper spray," "He bit me," and "Watch your gun[, h]e's going for your gun[,]" and that Woods was still "resisting and flailing around" after he had been handcuffed.

Moreover, the evidence in this case was overwhelming. There was no issue as to whether the officers were acting in the performance of their duties; the officers were lawfully attempting to arrest Woods for his assault on Discher. The officers were in uniform and were readily identifiable as police officers. They made several attempts to persuade Woods to peacefully leave the apartment or to open the door but Woods refused

to do so; instead, Woods barricaded himself in his apartment. The undisputed evidence indicated that when the police entered the apartment, Woods was agitated, both physically and mentally, and was making threats. He advanced toward the officers, flailing his arms and punching. He was unfazed by the taser gun. There was no evidence to support a finding that Woods was peaceful and willing to submit to arrest.

In this case, there is not the slightest possibility that had the complainant been disclosed, testified, and found credible by the jury that the jury would have acquitted Woods of any of the offenses. Thus, reversal is not merited.

DISPOSITION

The judgment is affirmed.

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McCONNELL, J.

WE CONCUR:

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McDONALD, Acting P. J.

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McINTYRE, J.